

ORIGINAL

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268

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FILED

Postal Rate and Fee Changes, 1997

Docket No. R97-1

REQUEST FOR THE IMPOSITION OF PROTECTIVE CONDITIONS

The United States Postal Service has propounded interrogatories concerning a survey done by Gary M. Andrew (RIAA, et al. T-1) of certain members of the associations sponsoring his testimony (Recording Industry Association of America and Advertising Mail Marketing Association). A full answer to at least one of those interrogatories would require the disclosure of information that might be thought to violate the Federal Trade Commission guideline that survey information from competitors should not be disseminated unless more than three companies have contributed to the data pool and the data from none of the companies represents more than 50% of all data reported. See, e.g., Advisory Opinion: Statistical Reporting Program Implemented Through a National Institute, 77 FTC 1728 (1970).

The distribution of such information represents a threat to competitive conditions only if participants in the industry at issue become aware of it. Consequently, we seek the imposition of protective conditions substantially similar to those approved by the Commission in the Presiding Officer's Ruling Granting Protective Conditions, Ruling No. R97-1/5 (August 7, 1997) to assure that the data collected for purposes of this proceeding are not put to impermissible and possibly unlawful uses. Because of the possibility that follow-up inquiries will require the disclosure of similarly protectible



information, we have cast the protective conditions generally to apply to matter designated by RIAA et al. as "CONFIDENTIAL."

As the Commission will note from the marked version of the R97-1/5 text that we are submitting with this pleading, most of the changes that we suggest are purely for the purpose of conforming that text to the factual circumstances here. One difference might be thought substantive. Instead of making the material designated as confidential available to all "participants" in the proceeding, we have asked that the material be made available only to counsel to participants, experts retained by participants for purposes of this litigation and participants where they are not represented by counsel. The additional limitation that we request ought not to be hurtful to any parties ability to vigorously litigate issues in this case and serves to protect the Trade Commission's interests that competitors not have access to information concerning those within the compete.

Respectfully submitted,



Ian D. Volner

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STATEMENT OF COMPLIANCE
WITH PROTECTIVE CONDITIONS

The following protective conditions limit access to ~~Postal Service Library Reference H-221~~ the RIAA et al. answers to certain interrogatories that have been designated as "CONFIDENTIAL" (the "RIA confidential material"). Individuals seeking to obtain access to that library reference material must agree to comply with these conditions, and complete the attached certifications.

- (1) Only those persons who are either:
 - (a) employees of the United States Postal Service, the Postal Rate Commission (including the Office of the Consumer Advocate) with a need-to-know; or
 - (b) counsel to participants in Postal Rate Commission Docket No. R97-1 or participants not represented by counsel; or
 - (c) ~~employed by such a participant, or acting as agent, consultant, contractor, affiliated person, or other representative of such~~ experts employed by such a participant for purposes related to the litigation of Docket No. R97-1; shall be granted access to ~~Postal Service Library Reference H-221~~ the RIAA confidential material.
- (2) No person granted access to ~~Postal Service Library Reference H-221~~ the RIAA confidential material is permitted to disseminate that library reference material in whole or in part to any person not authorized to obtain access under these conditions.
- (3) The final date of any participant's access shall be
 - (a) the date on which the Postal Rate Commission closes the evidentiary record in Docket No. R97-1; or
 - (b) the date on which that participant formally withdraws from Docket No. R97-1; or
 - (c) the last date on which the person who, obtains access is under contract or retained or otherwise affiliated with the Docket No. R97-1 participant on whose behalf that person obtains access; whichever comes first. The participant immediately shall notify the Postal Rate Commission and United States Postal Service counsel in Docket No. R97-1 of the termination of any such business and consulting arrangement or retainer or affiliation which occurs before the closing of the evidentiary record.

- (4) Immediately after the Commission issues its recommended decision in Docket No. R97-1, a participant (and any person working on behalf of that participant) who has obtained a copy of ~~Postal Service Library Reference H-221~~the RIAA confidential material shall certify to the Commission:
 - (a) that the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) that the copy (and any duplicates) either have been destroyed or returned to the Commission.
- (5) The duties of any persons obtaining access to ~~Postal Service Library Reference H-221~~the RIAA confidential material shall apply to material disclosed or duplicated in writing, orally, electronically or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the ~~document~~material, as well as to the entire ~~document~~material.
- (6) All persons who obtain access to ~~Postal Service Library Reference H-221~~the RIAA confidential material are required to protect the ~~document~~material by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the ~~document~~material as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.
- (7) These conditions shall apply to any revised, amended, or supplemental versions of ~~Postal Service Library Reference H-221~~the RIAA confidential material filed in Docket No. R97-1.
- (8) The duty of nondisclosure of anyone obtaining access to ~~Postal Service Library Reference H-221~~the RIAA confidential material is continuing, terminable only by specific order of the Commission.
- (9) Any Docket No. R97-1 participant or other person seeking access to ~~Postal Service Library Reference H-221~~the RIAA confidential material, by requesting access, consents to these or such other conditions as the Commission may approve.

CERTIFICATION

The undersigned represents that:

| Access to ~~Postal Service Library Reference H-224~~ the RIAA confidential material in Docket No. R97-1 has been authorized by the Commission.

| The copy of that material that I have obtained is marked on every page with my name.

I agree to use the information only for purposes of analyzing matters at issue in Docket No. R97-1.

| I will maintain in strict confidence the ~~information obtained from the Commission~~ RIAA confidential material in accordance with the conditions as set out above.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

CERTIFICATION UPON RETURN OF
PROTECTED MATERIALS

Pursuant to the Certification which I previously filed with the Commission with respect to information received in accordance with Presiding Officer's Ruling 1, on behalf of myself and/or the party which I represent (as indicated below), affirm as follows:

1. I have maintained in strict confidence the information provided by the Commission in accordance with Presiding Officer's Ruling.
2. I have used the information only for purposes of analyzing matters at issue in Docket No. R97-1.
3. I have ~~returned the information to the Postal Rate Commission.~~
4. ~~I have~~ surrendered to the Postal Rate Commission/destroyed all copies of the information which I obtained or which have been made from that information.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The following protective conditions limit access to the RIAA et al. answers to certain interrogatories that have been designated as "CONFIDENTIAL" (the "RIAA confidential material"). Individuals seeking to obtain access to that material must agree to comply with these conditions, and complete the attached certifications.

- (1) Only those persons who are either:
 - (a) employees of the United States Postal Service, the Postal Rate Commission (including the Office of the Consumer Advocate) with a need-to-know; or
 - (b) counsel to participants in Postal Rate Commission Docket No. R97-1 or participants not represented by counsel; or
 - (c) experts employed by such a participant for purposes related to the litigation of Docket No. R97-1; shall be granted access to the RIAA confidential material.
- (2) No person granted access to the RIAA confidential material is permitted to disseminate that material in whole or in part to any person not authorized to obtain access under these conditions.
- (3) The final date of any participant's access shall be
 - (a) the date on which the Postal Rate Commission closes the evidentiary record in Docket No. R97-1; or
 - (b) the date on which that participant formally withdraws from Docket No. R97-1; or
 - (c) the last date on which the person who, obtains access is under contract or retained or otherwise affiliated with the Docket No. R97-1 participant on whose behalf that person obtains access; whichever comes first. The participant immediately shall notify the Postal Rate Commission and United States Postal Service counsel in Docket No. R97-1 of the termination of any such business and consulting arrangement or retainer or affiliation which occurs before the closing of the evidentiary record.
- (4) Immediately after the Commission issues its recommended decision in Docket No. R97-1, a participant (and any person working on behalf of that

participant) who has obtained a copy of the RIAA confidential material shall certify to the Commission:

- (a) that the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) that the copy (and any duplicates) either have been destroyed or returned to the Commission.
- (5) The duties of any persons obtaining access to the RIAA confidential material shall apply to material disclosed or duplicated in writing, orally, electronically or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the material, as well as to the entire material.
- (6) All persons who obtain access to the RIAA confidential material are required to protect the material by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the material as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.
- (7) These conditions shall apply to any revised, amended, or supplemental versions of the RIAA confidential material filed in Docket No. R97-1.
- (8) The duty of nondisclosure of anyone obtaining access to the RIAA confidential material is continuing, terminable only by specific order of the Commission.
- (9) Any Docket No. R97-1 participant or other person seeking access to the RIAA confidential material, by requesting access, consents to these or such other conditions as the Commission may approve.

CERTIFICATION

The undersigned represents that:

Access to the RIAA confidential material in Docket No. R97-1 has been authorized by the Commission.

The copy of that material that I have obtained is marked on every page with my name.

I agree to use the information only for purposes of analyzing matters at issue in Docket No. R97-1.

I will maintain in strict confidence the RIAA confidential material in accordance with the conditions as set out above.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

CERTIFICATION UPON RETURN OF
PROTECTED MATERIALS

Pursuant to the Certification which I previously filed with the Commission with respect to information received in accordance with Presiding Officer's Ruling 1, on behalf of myself and/or the party which I represent (as indicated below), affirm as follows:

1. I have maintained in strict confidence the information provided by the Commission in accordance with Presiding Officer's Ruling.
2. I have used the information only for purposes of analyzing matters at issue in Docket No. R97-1.
3. I have surrendered to the Postal Rate Commission/destroyed all copies of the information which I obtained or which have been made from that information.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

CERTIFICATE OF SERVICE

I hereby certify that I have on this date served this document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.


N. Frank Wiggins

DATE: February 4, 1998